

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

R. O., a Minor, by his parent and guardian
JONATHAN OCHSHORN; T. S., a Minor,
by his parent and guardian MARK E.
SORRELLS; ANDREW M.H. ALEXANDER;
HARRY TO. STINSON; L. F., a Minor, by her
parent and guardian ELIZABETH A.
FATTARUSO; A. H., a Minor, by his parent
and guardian TERESA HALPERT
DESCHANES; BRYAN ELLERBROCK; and
P. P., a Minor, by his parent and guardian
RAMESH RAJ POKHAREL,

AFFIDAVIT

Plaintiffs,

vs.

ITHACA CITY SCHOOL DISTRICT; JUDITH
C. PASTEL, Superintendent, in her official and
individual capacities; WILLIAM RUSSELL,
Assistant Superintendent, in his official and
individual capacities; and JOSEPH WILSON,
Ithaca High School Principal, in his official and
individual capacities,

**CIV. NO. 5:05-CV-695
(NAM/GDB)**

Defendants.

STATE OF NEW YORK)
COUNTY OF TOMPKINS) ss.:

EILEEN BACH, being duly sworn, deposes and says:

1. I am Eileen Bach. I am a teacher at the Ithaca High School and have been so employed continuously since 1979.

2. I was the Faculty Advisor to The Tattler during the period 1992-2003. My interest in The Tattler extends from my arrival in Ithaca in 1979--well before my tenure as Faculty Advisor-- through to the present time. The Tattler is an important, journalistic voice in the Tompkins County community.

3. The Tattler has a long and rich history of independence and open forum status.

Historically, in one version or another, The Tattler masthead and/or editorial page has made clear that The Tattler was independent and an open forum for all student and community speech. In addition to the various copies of The Tattler and related materials which I understand are now before the Court, attached hereto and incorporated herein by reference are the following relevant exhibits:

Exhibit A Excerpt from The Tattler editorial page in the May 2001 issue.

Exhibit B Bach letter to Pultz dated March 18, 1996.

4. Exhibit A expressly refers to The Tattler as “an open forum” paper at the third page of the exhibit. In Exhibit B, I state unequivocally that “Dr. Hellweg does not have access to *The Tattler* prior to publication; prior review by the principal would make the principal liable for the contents of the newspaper”. Further, from my review of prior issues of The Tattler as well as from my own personal knowledge, The Tattler has prided itself on its independence and its open forum status for as long as I have had known or have had access to available information.

5. A few years after I became Faculty Advisor to The Tattler (approximately 1996), the editors and I included the following statement in the preface to a staff handbook that was distributed to The Tattler editors and made available to staff.

The Tattler functions as an open forum for student expression and the discussion of issues concerning IHS. Letters to the editor should be sent to 1401 North Cayuga Street, Ithaca, New York 14850. All letters must be signed. The Editorial Board reserves the right to edit material.

The Tattler Editorial Board will determine the content of the paper and all editorials; therefore, material may not necessarily reflect the opinions of the ICSD. Signed reviews report only the views and opinions of the author.

This language, or some version thereof, has been the guiding principle of The Tattler for at least the period 1992 through 2004, prior to the publication of the imposition of the guidelines at issue in this case.

6. Historically, the editors of The Tattler are seniors at Ithaca High School. The next year's editors are selected by the graduating seniors in May-June of each year. Neither the Faculty Advisor nor any member of the ICSD administration has any vote or control in the selection of the editorial staff of The Tattler.

7. Attached hereto and incorporated herein by reference as Exhibit D are examples of the numerous awards and recognition accorded The Tattler. Over the years, The Tattler has been recognized for excellence in journalism by the American Scholastic Press Association, the Scholastic Press Forum, the Empire State School Press Association and the Columbia School of Journalism, among others.

8. For as long as I have known The Tattler, both directly and indirectly, until the imposition of the guidelines at issue in this lawsuit the role of the Faculty Advisor always has been that of advisor only, and not a censor or the person with the final say. This is an important distinction that has been lost with the imposition of the guidelines at issue herein. The role of the Faculty Advisor is to advise and to persuade, not to dictate.

Ultimately, the final decisions with respect to article ideas and selection, editorial viewpoints and comments, reviews, other stories and newspaper content are made by the editorial staff and ultimately the editor-in-chief. The only exception to this broadly stated authority is in cases involving articles that are libelous within the meaning of the law, articles that are obscene within the meaning of the law or articles that advocate immediate, violent disruption of school activities in violation of the law (i.e. akin to shouting "fire" in a crowded

theater). In such exceptional cases, the Faculty Advisor did have the final say, subject to review by the principal.

9. Attached hereto as Exhibit E and incorporated herein by reference is my email to Dr. Russell dated February 11, 2005. In that email, I tried to explain precisely what I have set forth above. In the examples cited by me in that email, each incident involved one of the three exceptions set forth above. Indeed, in connection with the incident involving the editor-in-chief and two other editors that occurred in 2000, I consulted with the Student Press Law Center in Arlington, Virginia with respect to the matter; the advice of the Student Press Law Center was that the material was libelous and should not be printed. Attached as Exhibit C is a copy of the letter from the Student Press Law Center dated April 12, 2000. With respect to the other two incidents cited in the second page of the email, both decisions involved my advice to the editor-in-chief and that person taking ownership of the final decision.

10. The ICSD provides to The Tattler about 25 percent of its cost of producing newspapers. Over the years, most of the equipment was scrounged from secondhand sources, gifts from students and parents, and other non-ICSD outlets. All of the supplies, the printing costs, the postage and related expenses are included in The Tattler budget which is funded approximately 25 percent by the ICSD and 75 percent from other sources. The primary "other source" is revenue from ad sales made by students to local merchants. Further, the rare attendance at conferences historically has been paid for by the students and the Faculty Advisor themselves.

I am advised by members of the editorial staff that in 2004 and in 2005 the transportation cost for attending the Columbia Conference was underwritten by the ICSD.

11. More importantly, all of the time devoted to the creation of The Tattler represents the voluntary efforts of the students and for the most part the Faculty Advisor. The one class release credit that the ICSD grants to the Faculty Advisor for his/her role as Faculty Advisor amounts to about 20 percent of the time given by the Faculty Advisor to the enterprise (Exhibit F). Students and the Faculty Advisor work on the paper primarily during non-class time, during the evenings, during vacation times and during the weekends. It is not and never has been a part of the curriculum at Ithaca High School. Nor has The Tattler ever been part of any course of instruction, elective or not, given at Ithaca High School. Students in the elective journalism class are free to contribute material to The Tattler, but are treated no differently in that regard than any other contributor from either inside or outside IHS. Very rarely have editors been given non-core credit in minimal amounts for their substantial work on the paper.

12. I have viewed the guidelines that were imposed by the ICSD in January 2005 and that have been maintained ever since. Those guidelines do not reflect either the past practice or the policy of the ICSD and its relationship with The Tattler. Those guidelines drastically change the role of Faculty Advisor and the nature of The Tattler. Specifically, under those guidelines, The Tattler no longer is an independent, open forum paper. It is respectfully submitted that under the guidelines The Tattler no longer enjoys any of the constitutional protections that are guaranteed journalists in this country.

Dated: May 21, 2007

s/Eileen Bach

Sworn to before me this____
day of May, 2007.

Notary Public